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October 28, 2011

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Via ECF

Honorable Kiyo A. Matsumoto
United States District Court Judge

Honorable Roanne L. Mann
United States Magistrate Judge

United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Ross University v. Brooklyn-Queens Health Care, et al,
09-cv-1410 (KAM) (RLM)

Dear Judges Matsumoto and Mann:

My firm and I represent Defendants Brooklyn-Queens Health Care, Inc. ("BQHC") and Wyckoff Heights Medical Center ("Wyckoff," together with BQHC, "Defendants") in the above-captioned matter.

By Orders dated July 26, 2011, September 27, 2011, and October 19, 2011, the Court set forth the dates by which service of Rule 26(a)(2) disclosures, expert reports, and expert depositions would occur, as well as the schedule for the service and filing of Plaintiff's and Defendants' Pretrial Order submissions and the Joint Pretrial Order ("JPTO"). For the Court's convenience, copies of these prior Orders are enclosed as Exhibit 1.

The Rule 26(a)(2) disclosures and expert reports were timely served. Pursuant to the October 19 Order, expert depositions will be completed by November 3, 2011, and the JPTO is due to be filed by November 30, 2011.

Upon the completion of fact discovery, and the near completion of expert discovery, Defendants have determined that they have claims for partial summary judgment with respect to two of the theories of liability alleged by Plaintiff Ross University School of Medicine, Ltd. ("Ross"). The issue of whether either of the parties wished to submit summary judgment motions has not previously been raised with Judge Mann. As a result, the current case scheduling Orders issued by the Court do not provide for the briefing and submission of such motions.

*Defendants' request
to adjourn the schedule
for serving and filing
the Joint Pretrial
Order until after
motions practice is
hereby granted.*

SO ORDERED.

/s/

Roanne L. Mann
U.S. Magistrate Judge

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Now, however, with discovery nearly concluded, the issue of summary judgment is ripe and appropriate on two independent grounds that Defendants will outline in a forthcoming letter requesting a pre-motion conference pursuant to Rule IV(B)(1) of Judge Matsumoto's Chambers Practices.¹ The timing of Defendants' proposed motions is consistent with Fed. R. Civ. P. 56, which states that a party "may file a motion for summary judgment at any time until 30 days after the close of all discovery." Fed. R. Civ. P. 56(b).

Prior to the writing of this letter, Defendants' counsel contacted counsel for Ross on October 24, 2011 to discuss the issue of summary judgment motions, and to propose a schedule that would have briefing on any such motions completed by January 24, 2012, less than 60 days after the parties' current deadline for filing the JPTO. In response to this proposal, Ross' counsel expressed concern that the briefing and submission of summary judgment motions would delay the setting of a trial date. On October 27, 2011, Ross' counsel advised that Ross opposes any modification of the current schedule, set forth in Judge Mann's Orders, that would result in delaying the filing of the JPTO.

Defendants are entitled to file summary judgment motions under Fed. R. Civ. P. 56 and subject to the Court's pre-trial motion procedures. Rather than causing undue delay, testing Ross' claims through summary judgment motions could narrow the case and materially affect the scope of any issues to be tried, and thus the scope and content of any JPTO.

Accordingly, Defendants respectfully submit that the summary judgment process should precede the parties' preparation and filing of the JPTO, and propose the following modified case management schedule:

- Summary judgment motions due December 2, 2011;
- Briefs in opposition to summary judgment due January 10, 2012;
- Reply briefs in further support of summary judgment due January 24, 2012;
- Plaintiff's portion of the JPTO due 10 days after the Court's ruling on summary judgment;

¹ Defendants intend to submit a letter requesting a pre-motion conference on or before November 1, 2011. However, Defendants believed that it was appropriate to advise the Court of their intent to move for summary judgment by way of this letter in light of the motions' case management implications and Judge Mann's prior Orders.

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- Defendants' portion of the JPTO due 20 days after the Court rules on summary judgment;
- Combined JPTO due 30 days after the Court rules on summary judgment; and
- Status conference and trial date setting to be ordered at the Court's convenience thereafter.

Respectfully submitted,

Walter P. Loughlin s/APB

Walter P. Loughlin

cc: George J. Tzanetopoulos, Esq. (*by email only*)